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No. 1298

In the Supreme Court of the United States

OCTOBER TERM, 1967.

ATHENA CIELEN,

Petitioner,

vs.

AETNA LIFE INSURANCE COMPANY, a Corporation, and THE TRAVELERS INSURANCE COMPANY, a Corporation,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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The petitioner prays that this Court grant a rehearing of its Order of May 20, 1968, denying the Petition for Writ of Certiorari, and that a Writ of Certiorari issue to review the judgment of the Illinois Appellate Court, First District, in the above-entitled case as prayed in the Petition filed April 8, 1968, herein.

The said judgment of the Illinois Appellate Court, First District, was made final by the Order of denial by the Illinois Supreme Court, on January 9, 1968, of petitioner's Motion for reconsideration of the Order of the Illinois Supreme Court, denying Petition for Leave to Appeal. (Appendices "B", "C" and "D", pages 21-26 of Petition filed April 8, 1968, herein.) Therefore, the judgment of the Illinois Appellate Court, First District, is the judgment reviewable under 28 U.S.C.A., Section 1257. *Sullivan* v. *Texas,* 207 U.S. 416; *American Ry. Exp. Co.* v. *Levee,* 263 U.S. 19, 20-21; *Hammerstein* v. *Superior Court,* 341 U.S. 491, 492; *Michigan-Wisconsin Pipe Line Co.* v. *Calvert,* 347 U.S. 157, 160.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

Under Illinois practice, custom and usage, the denial of the Petition for Writ of Certiorari, is asserted as being tantamount to an adjudication on the merits, affirming the decision and Opinion of the Illinois Appellate Court (*Cielen* v. *Aetna Life Insurance Company, et al.*, 86 Ill. App.2d 22, 229 N.E.2d 571, Appendix "A", pages 15-20 of Petition), which held that the petitioner, as plaintiff, had the burden to prove, not only the accident, but to offer clear and convincing evidence eliminating all possible other causes of death, whether from disease or otherwise.

Obviously such a requirement discriminatorily deprives the petitioner, as plaintiff, of the Equal Protection of the Law applicable for accidental death benefits, and of Due Process of Law, and is in direct conflict with the authorities cited on pages 7-11 of the Petition for Writ of Certiorari.

Petitioner filed her Petition for Certiorari with the earnest hope and reliance on the profound wisdom of this Court for guidance, by granting her Petition with the resultant authoritative pronouncement of this Court expressed in an Opinion, which would discourage and deter the prevalent mischief, misunderstanding and injustices, as shown by conflicting decisions, which impose an impossible burden of proof upon the beneficiaries of life insurance policies with double indemnity provisions in sudden deaths which occur in traumatic circumstances.

Obviously, such impossible burden perverts and thwarts the purpose of such life insurance policies and is tantamount to impairment of the obligations of the insurance contracts for accidental death benefits, which is prohibited

by Article I, section 10, of the Constitution of the United States.

The Illinois Appellate Court Opinion and decision in the above entitled case, filed August 2, 1967, (Appendix "A", pages 15-20 of Petition filed April 8, 1968), is also in conflict with the Opinion and decision of the Illinois Appellate Court, in *Carlson* v. *New York Life Insurance Company,* 76 Ill.App.2d 187, 222 N.E.2d 363, involving accidental benefits, under an accident insurance policy. In this case, the Court's Opinion made an exhaustive analysis citing numerous cases and overruled the holding in *Welte* v. *Metropolitan Life Ins. Co.,* 305 Ill. App. 120, 27 N.E.2d 63 (1940).

Petitioner, under the Statement of the Case in her Petition filed April 8, 1968, pages 4-6, made specific references to the Certified Transcript of Record on Appeal, which was transmitted to this Court.

It is inherent in the Opinion and decision of the Illinois Appellate Court in the instant case (Appendix "A", pages 15-20), that petitioner, as plaintiff, was deprived of the equal protection of the established rule of law applicable to accidental death benefits, by holding that petitioner had the burden to prove not only the accident, which the petitioner did prove, (Rec. 138-147), but to offer clear and convincing evidence eliminating all possible other causes of death, whether from disease or otherwise.

It is plain and obvious that such Opinion of the Illinois Appellate Court systematically avoids and evades the petitioner's proof of her husband's accidental death, (Rec. 138-147), and the established rule of law applicable to accidental death benefits under policies of insurance.

As stated in *Carlson* v. *New York Life Insurance Company,* 76 Ill.App.2d 187, at 196, 222 N.E.2d 363, at 368,

"The body of law on this subject is vast and varied. See Annotations: 131 A.L.R. 240-269; 84 A.L.R.2d 176-317."

Petitioner respectfully submits that this is another compelling reason for this Court to consider, and to grant a rehearing of its Order of May 20, 1968, denying the Petition for Writ of Certiorari, and to issue a Writ of Certiorari to review the judgment of the Illinois Appellate Court, First District, in the instant case, as prayed in the Petition filed April 8, 1968.

Petitioner respectfully asks that equal and uniform justice, which is guaranteed by the Due Process and Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, be granted to her.

CONCLUSION

For the reasons set forth above and in the Petition for Writ of Certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Appellate Court of the State of Illinois, First Judicial District.

Respectfully submitted,

PETER S. SARELAS,
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Attorney for Petitioner,
Athena Cielen.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to grounds specified in Rule 58 of the Rules of this Court.

Peter S. Sarelas, Attorney for Petitioner.